

2704826 – Payments to Independent Contractors

Hi, I'm Joe Tiberio from the IRS Employment Tax Program in the Small Business Self-Employed Division in Washington, D.C. I'd like to welcome everyone to our webinar today entitled, Payments to Independent Contractors.

This webinar is designed for small-business owners, tax practitioners, and other stakeholders, to give you the basic information needed to properly report payments to independent contractors, Form 1099 miscellaneous filing requirements, backup withholding and how to avoid being liable for it, and CP2100 backup withholding notices for payee name, in tax for identification number, or mismatches. I hope you'll find this presentation both helpful and informative. This program will be archived on our website, www.irs.gov, for later viewing.

We would also like to extend a welcome to any participants representing the news media. If you are with the media, please send us a message at sbse.webinars@irs.gov with your contact information. Our Media Relations staff can answer any questions you might have following the presentation.

You can ask questions during the webinar by clicking the Ask a Question link under the PowerPoint window and hitting the Submit button. At the end of the presentation, Senior Policy Analyst Ed Hutzmann from Employment Tax will join me to help respond to your questions. Given the time constraints of this webinar, we can only answer general questions related to the topic and the information presented today. We request that you not ask taxpayer-specific questions, as we simply don't have the resources and access to the information needed to respond appropriately.

We also ask that when posing a question, you avoid revealing any sensitive or identifying information that might disclose personal and private information about you, your business, your clients, or other parties. We want to be sure to keep personal information confidential.

For your convenience, we have provided you with a PDF file of this presentation to download and print. Now let's get started with the presentation.

First, I would like to share with you the difference between employees and independent contractors. It is critical that you correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment taxes on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be an independent contractor. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

The person performing services may be an employee. Under common law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. What matters is that you have the right to control the details of how the services are performed.

To determine whether the person providing the service is an employee or independent contractor, all information that provides evidence of the degree of control in independence must be considered. The common law rules that provide evidence of the degree of control and independence are divided into three categories.

One is behavioral. Does the company control, or have the right to control, what the worker does and how the worker does his or her job? Two is financial. Are the business aspects of the worker's job controlled by the payer? These include things like: how is the worker paid, whether expenses are reimbursed, or who provides tools and supplies, et cetera. Finally, three, the type of relationship: are there certain

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contracts or employee-type benefits, such as a pension plan, insurance, vacation pay, et cetera? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. The keys are to look at the entire relationship, consider the degree or the extent of the right to direct and control. And finally, document each of these factors used in coming up with a determination.

If after reviewing the categories of evidence, it is still unclear to you whether a worker is an employee or independent contractor, Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, can be filed with the IRS. Either the business or the worker may file Form SS-8. If the worker files the form, the IRS will follow-up with the firm to get the firm's views as well. IRS will review the facts and circumstances and officially determine the worker's status.

Hi, I'm Tamara; and I work for the IRS. Did you know the IRS has more than 150 videos and archived webinars on numerous topics to help you with various tax issues? It's true, and they all can be found together on the IRS Video Portal. To get to the site, go to www.irs.gov and type Video Portal into the Search box; or go there directly by typing www.irsvideos.gov into your Internet browser. You'll find topics conveniently arranged, such as videos for individuals, small businesses, tax professionals, and more.

And if you're interested in watching webinars like this one, which have been previously broadcasted, click the All Webinars tab. You won't be able to get CPE credit by watching the archived version, but you will get helpful information.

The most popular feature on the Video Portal is our Small Business Workshop, which so far has been viewed 200,000 times. You might also want to check out Your Guide to an IRS Audit, which can hopefully take the fear out of an audit by letting people know what to expect and what their rights are during an IRS audit. Again, you can get to the Video Portal by going to www.irs.gov and typing Video Portal into the Search box.

By now, I am sure you are asking yourself: What are my employment tax obligations? Once a determination of whether the worker is an employee or independent contractor is made, whether by your business or by the IRS, the next step is filing the appropriate forms in paying the associated taxes. Information on reporting payments to employees is available in Publication 15 (Circular E), the Employer's Tax Guide.

The remainder of this presentation will address reporting requirements for payments to independent contractors. Forms 1099 may be required for other types of payments as well. Information on other types of payments that may require a 1099 can be found on www.irs.gov.

There are many kinds of Form 1099. But for this presentation, I will be exclusively talking about Form 1099-MISC. Form 1099-MISC is most commonly used by payers to report the payments made in the course of a trade or business to others for services. If you paid someone who is not your employee, such as a subcontractor, an attorney, or an accountant, \$600 or more for services provided during the year, the payment might need to be reported on a Form 1099. You must provide Form 1099 to the independent contractor by January 31st of the year following the payment.

You must also send a copy of this form to the IRS by February 28th, although the form does not have to be filed with the IRS until March 31st if your business files their 1099s electronically.

You may have to file Form 1099 to report payments for services performed for your trade or business if the following four conditions are met. One, you made the payment to someone who is not your employee. Two, you made the payment for services in the course of your trade or business, including government agencies and non-profit organizations. Three, you made the payment to an individual, a partnership, a

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state, or in some cases a corporation. And four, you made payments to the payee of at least \$600 during the year.

Generally, you report a payment as a Non-Employee Compensation. Payments for services to corporations generally are not required to be reported on Form 1099 unless those payments were for legal or medical services. However, payments for services to partnerships are required to be reported on Form 1099. A common mistake is failing to issue Form 1099 to a limited liability company or LLC. An LLC is a business structure allowed by state statute. Depending upon elections made by the LLC and the number of members, the IRS will treat an LLC as either a corporation, a partnership, or as part of the LLCs owner's tax return.

Payments for services to LLCs must be reported on Forms 1099 unless the payee has elected to be treated as a corporation for federal tax purposes. It's important to properly complete Form 1099 in order to avoid backup withholding and penalties, which will be discussed later.

Be sure to complete the payer's - that's your name and address; the payer's Federal identification number; the recipient's identification number; the recipient's name and address; and, in Box 7, the amount paid to the independent contractor. Your business is only required to secure the payee's TIN when the payment becomes a reportable payment; that is, generally when the total payments in a calendar year exceeds \$600.

Form W-9, Request for Taxpayer Identification Number and Certification, can be used to request the correct name and TIN of the payee; but it's not required at this point. A TIN may be either a Social Security number, or an SSN, or an Employer Identification Number or EIN. You can secure the payee's TIN in any manner, written or orally. If you do secure the payee's TIN using Form W-9, keep the Form W-9 in your files for four years for future reference and in case of any questions from the payee or from the IRS.

What should you do if a payee doesn't provide or refuses to provide you their TIN? You, as the payer, should initiate backup withholding. "What is backup withholding?," you might ask. Under the provisions of Internal Revenue Code, Section 3406(b), persons making certain payments to payees must withhold and pay to the IRS a specified percentage of those payments under certain conditions, including payments to independent contractors. Publication 15 includes a listing of other types of payments that may be subject to backup withholding.

Backup withholding is also applicable if a payee provides you with an obviously incorrect TIN. An obviously incorrect TIN is one that contains more or less than 9 digits or contains alpha characters, say, letters. If a payee does not provide you with his or her TIN, you as the payer are required to withhold 28% from the payment as backup withholding. If the IRS discovers that you, the payer, did not withhold the required backup withholding, you can be held liable. You report backup withholding on Form 945, Annual Return of Withheld Federal Income Tax.

For more information, including the deposit requirements for Form 945, see the instructions for Form 945 or Publication 15.

When the IRS receives Forms 1099, the IRS matches the name and TIN for verification purposes. The IRS may send you a CP2100 or CP2100A, Backup Withholding Notice if the payee's TIN is missing or obviously incorrect or the payee's TIN doesn't match the payee's name. The CP2100 will include a list of payees with missing TINs and payees whose TIN and name do not match.

What do you do if you receive a CP2100 or CP2100A Notice? The first step is to compare the listing with your records. The error could be an oversight or an error in your own records. If this is what happened, the only thing you should do is correct your records and update them. For missing or obviously incorrect TINs, determine if you are already backup withholding on payments made to that payee. If you are not, begin backup withholding immediately.

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You must also make up to three solicitations for the TIN -- initial, first annual, second annual – to avoid a penalty for failing to include a TIN on the information return. For incorrect TINs, compare the accounts on the listing with your business records. If they agree, send the appropriate "B" Notice to the payee. A "B" Notice is a letter to the payee asking the payee to verify his or her TIN. The specific documentation the payee must provide, will depend on whether this is the first time the payee appeared on a CP2100 list. Specific instructions are included on the CP2100 Notice.

Generally, you should begin backup withholding if a payee fails to respond to a "B" Notice within 30 days. It's important to backup withhold when required and follow the instructions on the CP2100 Notice. If you don't, you, the payer, may be held liable for any backup withholding that was required.

In addition to backup withholding, a payer may also be subject to penalties for failure to file a correct information return if information is missing or incorrect or a payer fails to issue a required Form 1099. The penalty for failure to file a correct Form 1099 is \$100 per Form 1099. There is also a \$100 penalty for failure to furnish Form 1099 to the payee.

This concludes the video portion of our webinar, and we thank you for watching. If you would like to submit a question, select the Ask a Question link under the PowerPoint window and then click Submit.

But before we begin, let's discuss a few answers to some frequently asked questions regarding payments to independent contractors.

Question 1: Can a sole proprietor have an SSN, or does he or she need an EIN?

A sole proprietor may have an SSN or an EIN; however, he or she must always furnish his or her individual name on Name Line 1, regardless of whether he or she uses an SSN or an EIN. A sole proprietor may also provide a business name, doing business as, a DBA, on Name Line 2. But he or she must list his or her individual name first on the account with you.

Question 2: Are payments to limited liability companies, LLCs, required to be reported on Forms 1099?

Payments for services to LLCs must be reported on Forms 1099, unless the payee has elected to be treated as a corporation for federal tax purposes.

Question 3: Is an individual ITIN considered a valid TIN for the purposes of filing Form 1099? Am I required to backup withhold if a payee provides an ITIN?

First, an ITIN is considered a valid TIN for the purpose of filing Form 1099. Backup withholding is not required if a payee provides an ITIN, unless you're notified by the IRS on a CP2100 Notice that the name and ITIN don't match.

Now let's begin the Q&A segment. Ed and I will respond to your questions.

Karen:

Hi, I'm Karen Russell with the Internal Revenue Service; and we hope you found today's webinar helpful and informative. We are very fortunate to have two knowledgeable subject matter experts joining us today from the IRS Small Business Self-Employed Division. They are Ed Hutzmann, Senior Policy Analyst for Specialty Programs, and Lynne Miele, Senior Policy Analyst, Employment Tax Policy.

Welcome to both of you.

Ed:

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Thanks.

Karen: Thank you. Glad to be here.

Karen:

That's great. We've received some important questions, and let's get started.

Lynne, I'm going to direct this first question to you: Can you explain the recent changes to the penalty for failing to file correct information returns?

Lynne:

Yes, on June 29, 2015, President Obama signed into law the Trade Preference Extension Act of 2015, H.R.1295. The new law increases the taxpayer penalty cap for failure to file correct information returns under Section 6721 and failure to furnish correct payee statements under Section 6722 from \$1.5 million to \$1.3 million for both penalty sections. The amount of each individual failure has increased from \$100 to \$250. Lower penalty caps for when the penalty is corrected within 30 days or before August 1st have also doubled and tripled to \$500,000 and \$1.5 million, respectively.

Lower limitations for persons with gross receipts of \$5 million or less have also been raised. The penalty amounts are indexed for inflation. These increased penalties will apply to returns and statements required to be filed after December 31, 2015.

Karen:

So these are some pretty big changes, and it's great that we were able to bring this out today on this webinar.

I've got another question for you, Lynne: A participant saw today on www.irs.gov a Fact Sheet that seems to be related to the topic that we're talking about, payments to independent contractors. And the last section of the Fact Sheet mentions something about VCSP. Can you tell us what VCSP is, and how does it relate to payments to independent contractors, please?

Lynne:

Yes, I'm so glad you brought that up. The Voluntary Classification Settlement Program is a voluntary program that provides an opportunity for taxpayers to reclassify their workers that they're currently treating as independent contractors to employees for employment tax purposes for future tax periods, with partial relief from the federal employment taxes. To participate, you must meet certain eligibility requirements, such as not being under an Employment Tax Audit, and apply by completing Form 8952, which is the Application for Voluntary Classification Settlement Program.

Eligible taxpayers accepted into the program will enter into a closing agreement with the Internal Revenue Service to finalize the terms of the Voluntary Classification Settlement Program.

Karen:

Thank you, Lynne. So in a nutshell, the Voluntary Classification Program is for people that have employees that they realize are not independent contractors. And as long as they meet eligibility requirements, they can submit information paperwork to actually get into this program, correct?

Lynne:

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That's correct. If they're currently treating their workers as independent contractors, but really they should be classified as employees, this is a voluntary program to help them relieve some of their federal employment taxes by applying for the Voluntary Classification Settlement Program.

Karen:

That is great information.

Ed, I have a question for you that came in: What if a company pays cash to an independent contractor; does that need to be reported?

Ed:

Yes, the method of payment is not dependent upon whether a taxpayer business is required to file a Form 1099. Whether a business pays in cash or by check or by credit card, if they make a payment to an independent contractor that exceeds \$600, they are required to file a 1099. So again, the method of payment is not the criteria. It is the amount of the payment that is the criteria.

Karen:

Okay, I'm going to follow up with another question: What if someone is paid \$500 for one job, and later this company pays the same person \$500 for another job? Those are both under \$600. So does a Form 1099 have to be issued or does it not?

Ed:

That's a good follow-up question because it's important to understand that it's not just the payment for each specific job. If you have an independent contractor that is performing separate jobs throughout the year, a business determines whether a 1099 is required to be filed depending upon the total payment that's made during the year. So in that case, since the total payment would be \$1,000 -- \$500 for the first job and \$500 for the second job -- the business would be required to file a 1099.

But it's important to note that if the first \$500 payment, that payment would not, in and of itself, be a reportable payment. So the business would not be required to have secured the payee's TIN at that point. But when they made the second \$500 payment, that put them over the \$600 threshold. So if the business did not have the payee's TIN at the time they made the second payment of \$500, they would be required to backup withhold on that second \$500 payment.

Karen:

Okay, that's actually a really good point.

And I have another question that I'm going to ask Lynne, and then we'll discuss the W-9. The question came in: Do I have to use a W-9 to get the information from the contractor to issue a 1099-MISC at the end of the year?

Lynne:

The Form W-9, the Request for Taxpayer Identification Number and Certification, may be used to secure the vendor's tax identification number and entity information but is not required until they're notified by the Internal Revenue Service that there is an incorrect name or TIN combination.

Karen:

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Okay, and so then let me ask a second question from a participant: They said that they thought all payments required a W-9 before payment to know if the contractor or vendor may be subject to backup withholding. Can you clarify that?

Lynne:

Well, that's a good idea to secure the W-9 because it's a form that's signed under penalty of perjury by the payee. But it's not required until they receive a Notice CP2100 from the IRS.

Ed:

And if I could just follow up on that, Lynne, it's required that the business secures the payee's TIN once they have a reportable payment. So when they're first hiring a worker to perform services, they're only required to get the TIN at the time that there is a reportable payment, meaning the payment is in excess of \$600. And the first time they're requesting the TIN, they can get it in any manner, whether it's verbal or in writing -- in any format.

But the notification that Lynne is discussing is if the business does not secure the payee's TIN or secures an incorrect TIN, they may receive what's called a Notice CP2100, which will identify that the TIN is missing. And at that point, there are specific procedures. And one of the procedures would be at that point they would then be required to get a W-9.

Karen:

So basically, whether or not you know if you're going to pay a contractor over \$600, it would just be a good practice to secure all that information from the get-go because the relationship may be an ongoing relationship. And if the company gets the information right at first, then they don't have to worry about it down by the road by getting notices from us and things like that, correct?

Ed:

Oh, absolutely, it certainly is a good business practice to try to secure the payee's TIN before they begin any work or at the time they start to work, especially if the business isn't sure whether they're going to pay them more than \$600. If the business knows that they're going to be paying them more than \$600 throughout the calendar year – for example, they've entered into a contract for \$1,000 – certainly it would be a good business practice. And it certainly that would relieve the business from any potential liabilities down the road for backup withholding.

Karen:

Okay, thank you for that, Ed. I actually have another question for you: How does the payer know if an LLC has elected to be treated as a corporation? Oh, I'm sorry, excuse me. Ed, that is not for you.

That was actually, Lynne, for you.

Ed:

Sure, Lynne can answer that.

Lynne:

The best way to identify the entity type is if they've completed the Form W-9, the Request for Taxpayer Identification Number and Certification. Not only does it identify their tax identification number, but there's also a box for them to check their entity type.

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Karen:

Okay, and then, Ed, this one is for you: If the LLC is a partnership, do they still need to be 1099'd?

Ed:

The short answer to that is, yes. And it's important to note, as Lynne said, that the Form W-9, although not required initially, is a good form to get, especially if the worker that you're paying is not an individual. And they can designate whether they're a partnership, a corporation.

Just for clarification, an LLC is a state designation for another business that one business may be paying to perform services. But for federal purposes, that business has to be designated either as a sole proprietorship, a partnership, or a corporation, or even an S corporation. So if that LLC is a partnership or a sole proprietorship, then a Form 1099 is required. So businesses who pay companies who are LLCs should not just automatically assume that a 1099 is not required. It's very important to request the information. And, as Lynne pointed out, a Form W-9 is a form that certainly can be used to get that information so they would know whether a 1099 would or would not be required.

Karen:

Awesome, thank you. And I think you said something about an S corporation as well. So the W-9 would be great for either the LLC and the S corp?

Ed:

Yes, basically an S corp is just another corporation. It's a small business corporation that's a specific federal designation. So an S corp is no different than any other corporation. So in general, Forms 1099 for services are not required to be reported if the payment is to an S corp or a corporation. They fall under the same category, unless the payment is for legal services or for medical payments.

Karen:

Okay, thank you so much for that clarification.

Lynne, I have something for you: Could you please repeat the fines for not filing on time accurate Form 1099-MISC?

Lynne:

Yes, I'd be happy to. The failure to file penalty for 1099s for failure to file and failure to furnish under Section 6721 and Section 6722, the caps have increased from \$1.5 million to \$3 million. And the amount for each individual failure has increased from \$100 to \$250.

Karen:

Thank you so much. And then can you also go over "B" Notices in a little more detail, Lynne?

Lynne:

Sure, I'd be happy to. Once the Form 1099 has been filed, the Service compares the tax identification number to the name of record. And if there's a mismatch, they send out the Notice CP2100 to inform the payer that we have a problem, a mismatch, or a missing tax identification number. At that point, the payer should check their records first; but if their records match what's on the CP2100 Notice, then within 15 business days, they should send a "B" Notice to the payee with a Form W-9, requesting that they provide their current taxpayer identification number and name.

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Karen:

Thank you, Lynne. I have another question for you: What is the Form 1096 for?

Lynne:

The Form 1096 is the Annual Summary and Transmittal of U.S. Information Returns, and it's used to transmit the Form 1099s to the Internal Revenue Service.

Karen:

Okay, and I have one quick question also: Are extensions available for filing Forms 1099 and 1096?

Lynne:

A 30-day extension may be obtained by filing a Form 8809, the Application for Extension of Time to File Information Returns. And additional information may also be found in Publication 1220.

Karen:

Thank you so much.

Ed, if you hire a security guard for an event, is he considered an employee or a contractor?

Ed:

That's a difficult question to answer without some very specific facts. The determination as to whether a worker is an independent contractor or an employee is whether the business has the right to direct and control a worker. And there are many factors that go into it; but we basically break the factors down into three categories of evidence, which are behavioral control, financial control, and relationship with the parties.

There are many questions that go into that, such as for behavioral control, whether the business directs the worker as to what time they need to show up; whether they need to wear a uniform; and whether they are required to submit reports; and basically how the worker performs his services.

For financial control, that will depend upon the method of payment and whether the worker has the ability to show a profit or loss from performing those services.

And when we look at the last part, the relationship of the parties, we look at things like what was the intent of the parties? Did they both have the same understanding as to whether the worker was an independent contractor or employee, whether the business is providing benefits, if there was a contract between them?

So there is no simple answer to that. The only way to make that determination is to go through the various factors. And when you look at the various factors, some factors will point toward independent contractor status; and some factors will probably point toward employee status. But you have to look at the overall result of looking at that to determine whether the business has the right to direct and control.

And one of the significant factors that you look at when making a determination as to whether a business has the right to direct and control is whether that worker is an integral part of the payer's business. Because obviously, the more important that worker is to that business, the more likely it is that that business will direct and control that worker as to what services they perform.

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But if a business isn't sure whether a worker is an independent contractor or employee, we do have a form. Businesses can write to the IRS; it's Form SS-8. It basically walks through a series of questions which are directed toward the right to direct and control. And the business can complete that and receive what's called a Determination Letter from the IRS, in which we will then tell you whether we believe that the worker is an employee or independent contractor.

Karen:

Thank you, Ed. So what the person can do if there's some confusion, if the owner of the business is confused and they go and they look through the criteria and they still cannot decide if this person is an employee or a contractor, then the SS-8 can be completed, sent into the IRS; and we'll give them a response to help them out in that situation about the determination.

Ed:

Yes, it's really a good service to have. And businesses can use it. And in addition, individuals can use it also. So individuals who are treated either as – in most cases what we see is individuals who are treated as independent contractors who believe they may be employees can write in for the same determination and get a Determination Letter from the IRS as to whether they really, truly are an independent contractor or whether the business should be treating them as an employee.

Karen:

Okay, and I've got a couple of more questions for you Ed that are interesting. And I've heard about this; I've heard it happens: What if a person that is being hired to do something refuses to give his or her Federal ID number?

Ed:

Well, that's really a very simple answer because if the business is making a reportable payment, meaning they're paying that worker in excess of \$600, if that worker did not provide their taxpayer identification number, then the business should automatically backup withhold from any payments that are made to them. So if, for example, they're going to pay the worker \$1,000 and the worker has refused to give them their TIN, then they should withhold 28%, or \$280, and then only remit the balance to the independent contractor. And the backup withholding would then be reported on a Form 945. It would also be reported on the 1099-MISC, so the worker would get credit for it. So the gross amount that's reported on the 1099 would be \$1,000 with \$280 of backup withholding. And certainly then the business would need to remit that payment to the IRS since it's a withheld tax.

Karen:

Excellent information, Ed. Thank you so much.

Lynne, I have a quick question for you: Is there documentation that shows the new thresholds of penalty amounts that you talked about a few moments ago?

Lynne:

Yes, there is documentation. But right now, it can only be found in the Trade Preference Extension Act of 2015. The law was just enacted on June 29, 2015; and I'm sure, as soon as possible, we'll get this posted to www.irs.gov.

Karen:

Okay, so people just need to go online at www.irs.gov and check regularly.

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Ed, if a person pays a bonus to an employee, does the bonus get reported on the 1099-MISC?

Ed:

Yeah, this is another common issue that we often see. If the worker is an employee, then all payments to that employee need to be reported on Form W-2 and are subject to employment taxes. Again, the determination as to whether the payment is reported on a W-2 or 1099 is not based upon the type of payment; it's based upon the category of worker, whether they're an employee or independent contractor.

So bonuses, -- for example, Christmas bonuses or a sales quota bonus -- if the worker is an employee, then that's reportable on a W-2. And it is subject to employment taxes, which means it's subject to income tax withholding and FICA tax.

Karen:

Okay, that's good to know.

Lynne, I have a quick question for you. A participant wants to know: Do you have to withhold as soon as a contractor passes the \$600 mark if they do not give you their taxpayer identification number for that year?

Lynne:

If the tax identification number has not been received from the payee, once the payment reaches or exceeds \$600, at that point, they would start the backup withholding.

Karen:

Okay, and then they would report it, just like what Ed said -- the whole process of deducting it, reporting it, and sending it to the person on the 1099 at the end of the year?

Lynne:

That would be correct. It would be reported on the 1099-MISC, as well as the Form 945, which is the Annual Return of Withheld Federal Income Tax.

Karen:

Okay, and let's see. We've got time for a couple more questions.

This was a simple one, Ed, and I probably should have asked this at the very beginning: If a contractor does work at someone's house, do they have to issue a 1099-MISC?

Ed:

That's a good question because we've been basically talking about Forms 1099 in regard to businesses. And the answer to that is it's only businesses only if the payment that's made to the independent contractors is made in the course of a trade or business. So individuals who hire workers to perform work around their house as homeowners, whether someone's putting a roof on their house or you hire a landscaper, those are independent contractors. But a homeowner, an individual, is not required to file a 1099, only if those payments are made in the course of a trade or business.

The difference would be if your house was your business property maybe and you were running your business out of the house and you were hiring them to maybe install a business sign or something out in the front of your yard or something, then you would be required to issue a 1099.

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Karen:

Okay, and I'm going to follow up with another question. If a person owns rental property and they receive payments for rental, does that need to be reported on a 1099-MISC?

Ed:

Yes, rental payments, again, there are specific requirements regarding rental payments. But businesses that make rental payments are required to issue 1099s. There are some types of exclusions as to when they don't have to issue them, and that information can be found in the publications on the 1099 reporting requirements.

Karen:

Okay, thank you so much.

And we have time for more question, and this is going to go to you, Lynne. I just want to make sure that the audience is clear about how you determine if the LLC has opted to be treated as a corporation. Can you expound on that, please?

Lynne:

Yes, once again, the Form W-9, the Request for Taxpayer Identification Number and Certification, not only does it have a space for the payee to include their tax identification number, but it has a block for them to identify how they're treated as far as the taxable entity. And if they choose to be treated as a limited liability company, there's an additional box for them to tell you how they're taxed – whether they're taxed as a single member, a sole proprietor, a partnership, or a corporation. So the best form to identify that would be the W-9.

Karen:

Okay, thank you. And we had a follow-up question about the penalty information that you went over: Is the penalty \$250 per 1099, or is it \$250 per employer?

Lynne:

Okay, that's a great question. The penalty will increase for returns or statements required to be filed after December 31, 2015, to \$250 for each individual failure to file or failure to furnish information returns.

Karen:

So if the employer fails to file 10 accurate returns, then it's \$250 each time for each one of those -- \$250 times 10 would be the penalty, correct?

Lynne:

Correct, so the penalty could be \$2,500. And that could be a maximum penalty up to \$3 million per employer.

Karen:

So it would be best if the information was filed accurately and timely for everyone involved.

Lynne:

Yes, that's correct.

Karen:

All right, and I think we do have time for one more question; and it's about the "B" Notices: We understand a "B" Notice must be sent in certain circumstances. Can you explain briefly what the "B" Notice is again? And is there an example of it anywhere on www.irs.gov? Do you know if there's an example of it somewhere?

Ed:

Do you want me to take this one, Lynne? I'll take this.

A "B" Notice is when a business has mismatches on the 1099 between the name and the TIN or they have missing TINs. The business will receive a CP2100 Notice. And it will have procedures that they need to follow. And one of those procedures is for them to send a "B" Notice to the payees. The "B" Notice, it's identified in the letter; and the "B" Notice basically is going to ask for the information from the payee, telling them that they need to provide their correct TIN to the payer. And it's basically a form letter. And that can be found in Publication 1281.

Karen:

Okay, thank you so much.

That's all the time we have for questions. And before we close today's broadcast – Ed, Lynne – are there any important points you want the attendees to remember?

Ed, let's go ahead and start with you on that.

Ed:

Okay, well, since we just spoke about the CP2100 and the "B" Notice, I want to start by saying it's very important when a business hires workers to be sure that they secure their TINs and to issue the required information returns. Because as you can see, especially from the increased penalties, failure to file information returns can add up very quickly and become a very significant amount. And failing to secure the TINs, many businesses also fail to backup withhold, which can cause a business to be subject to backup withhold at a later time if the IRS contacts them.

And on that note, when a business does receive a CP2100 identifying that they issued Forms 1099 with missing TINs or mismatched TINs, it's very important that they follow the procedures in that notice. Because if they do not follow those procedures and do not begin implementing backup withholding on those payees for any future payments, they could be subject to backup withholding in the future and certainly any penalties regarding incorrect 1099s. So again, I would certainly encourage businesses, as a good business practice, to secure the payees' TINs and be sure to comply with the CP2100 Notice.

Karen:

Thank you, Ed, for that. Lynne, if you have anything to add, we would like to hear that.

Lynne:

I just want to one more time remind everyone that the penalties are increasing for returns filed after December 31, 2015; and they're increasing to \$250, per information return, for failure to file and failure to furnish, with a maximum of \$3 million cap for those penalty sections.

2704826 – Payments to Independent Contractors

In addition, I'd like to say, for all of the taxpayers that are currently treating their workers as independent contractors, but should be classifying them as employees, to consider the Voluntary Classification Settlement Program by filing Form 8952. And of course, you can find more information on that on www.irs.gov.

Karen:

Which we're getting ready to go over.

Ed and Lynne, I want to thank you so much for your time and for sharing that information.

And for the participants today, that's all the time we have. I appreciate you watching our webinar. We hope you learned a few things about payments to independent contractors. If you have any questions that were not answered today, please visit our website at www.irs.gov. You can use key words, such as "contractor" or "information return reporting" or "backup withholding" in our Search box to find related hot topics, guidance, online tools, resources such as the Publication 1281, and much, much more.

Now, for those of you who are participating to earn credit, no further action is required on your part. Certificates of Completion will be issued to those who qualify. They will be e-mailed in approximately two weeks from the date of this broadcast. And in case you would like to review this information again or possibly refer someone who was not available to view our webinar today, it will be posted in approximately three weeks in the IRS Video Portal at www.irsvideos.gov.

Thank you again for your time and attendance, and much success to you in your business or practice. We hope you have a great day. Thank you so much.